IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.31 OF 2004

IN

MISC.APPLICATION NO.424 OF 2001

Labh Singh Bapna ...Applicant

Versus

C.B.I. (A.C.B.) & Anr. ...Respondents

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Mr.N.D.Shetty for Applicant.

Mr.J.C.Satpute for Respondent No.1.

Mr.A.S.Gadkari, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

MARCH 14, 2005.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. This Revision Application takes exception to the order passed by the Special Judge for CBI, Greater Mumbai dated November 21, 2003 on the

application preferred by the Applicant being Misc.Application No.424 of 2001 in Special Case No.56 of 1998 for discharge.

3. The Court below has recorded reasons, as can be discerned from Paragraphs 3 to 5. The reason recorded by the lower Court in Paragraph 4 has been seriously criticised by the Applicant, being not supported by materials on record. It is not necessary for me to go into the said aspect.

4. The question before me is: whether there is material to support the prosecution case as stated is the charge-sheet filed against the Applicant, who is accused No.8? Insofar as, the Applicant is concerned, the prosecution case is as follows :

> "That the said Shri L.S.Bapna on 30.12.1987 put up a note saying that the ex-factory price of the Sodium Nitrate was Rs.6050/- and the competitors, M/s.Deepak Nitrite were selling the said product at the rate of Rs.5600 per ton and offering discount of 2.5% and that in order to compete with M/s.Deepak Nitrite it was essential to give 60 days interest free credit for Sodium Nitrate sold. It is further alleged that the said Shri L.S.Bapna recommended discount of Rs.176/- per ton and that the said Shri

R.Venkatesan gave his approval in this regard on 31.12.1987 and a circular dated 1.1.1988 was issued to the effect that the material - NaNO3 can be sold on 60 days credit basis against collaterals or a cash discount of Rs.160/- per ton. That the rates of M/s.Deepak Nitrite during the said period did not fluctuate. It is alleged that the aforesaid note of the said Shri L.S.Bapna recommending reduction of price of Sodium Nitrate by RCF Ltd., Chembur was false and as a result of this price reduction, the R.C.F. Ltd., Chembur, Mumbai, suffered a loss of Rs.1,12,000/-.

That in pursuance of the said aforesaid criminal conspiracy, a wrongful loss of Rs.50,37,403.15 was caused to the RCF Ltd., Chembur, Mumbai, and corresponding gain to the said Shri Pradip Ramrakhiani, in the aforesaid manner.

That the aforesaid acts on the part of S/Shri R.Venkatesan, Roop Kishore Dargar, L.S.Bapna, Kuldip Narayan, Pradip Ramrakhiani, Partner of M/s.Pradip & Company, and Proprietor of M/s.Raja Chemicals Corporation, Mumbai, constitute offences punishable under sections 120-B IPC and Sec.13(2) r/w 13(1)(d) of P.C.Act, 1988."

5. The moot question is: whether there is material to support the charge that the proposal which was submitted by Bapna claiming that there was no demand in the Market for RCF Products and to meet the competition of M/s.Deepak Nitrite, it would be essential to provide for the scheme as

referred to in that proposal dated 30th December 1987. The fact that there was no demand in the Market as stated by the Applicant in his proposal, is countered by the evidence collected by the prosecution during investigation in the form of statements of Ms.Raveena Nanji Ruparel, employee of M/s.Thakkar Chemicals & Fertilizers Pvt.Ltd., Shri Mukundrai Dwarkadas Gandhi, another authorised dealer of RCF, as well as Shri Jayantilal Kantilal Shah, also an authorised dealer of RCF. They have plainly stated that at the relevant time, there was demand for RCF product and in fact, there was always short supply to the authorised dealers of RCF. In other words, it has come on record that the fact stated by the Applicant in the proposal submitted by him on 30th December 1987 that there was no demand in the Market for RCF product is incorrect.

6. To get over this position, Counsel for the Applicant submits that the offence pertain to year 1987-88, whereas, statements of concerned witnesses have been recorded in the year 1994 and there is no documentary evidence to support their stand.

7. That, however, is a matter for trial. It is not possible for this Court to discharge the Applicant on accepting the said argument. For the purpose of discharge, this Court has only to weigh the relevant material to find out whether the case made out by the prosecution is supported. As mentioned earlier, the statements of concerned witnesses, prima facie, does support the prosecution case. The truthfulness or acceptability of that version will be a matter for trial.

8. During the course of arguments, it was also contended on behalf of the Applicant that there is absolutely no material collected during the investigation to support the allegation that the rates of M/s.Deepak Nitrite during the relevant period did not fluctuate. It is not necessary to go into all contentions, for, I am of the view that the main charge against the Applicant that he had submitted false proposal which resulted in reduction of price and RCF had to suffer loss to the extent of Rs.1,12,000/- (Rupees One Lakh Twelve

Thousand) and on account of the criminal conspiracy, a wrongful loss of Rs.50,37,403.15 (Rupees Fifty Lakhs Thirty-Seven Thousand Four Hundred Three & Fifteen Paise) was caused to R.C.F. and corresponding gain to a private party. Accordingly, not a case for discharge.

9. The conclusion reached by the lower Court in rejecting the discharge application preferred by the Applicant, therefore, merits no interference. Hence, dismissed.

A.M.KHANWILKAR, J.